

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9219 of 2005

Vijaydatta Balkrishna Garde Petitioner

versus

Vasant Shankar Ghorpadkar ... Respondent.

Shri Tejas Deshpande for the petitioner
Shri R.S.Apte for Respondent.

CORAM; P.V. KAKADE, J.

DATED; FEBRUARY 15, 2006.

P.C:

1. Heard both sides. Perused the record.

2. The petitioner has preferred this petition against the judgment and order passed by ad-hoc Addl.District Judge, Pune dated 27-10-2005 dismissing his appeal and confirming the judgment and decree passed by the trial court in Suit No. 337/01 whereby defendant was directed to deliver vacant possession of the premises to the plaintiff in the said suit under the provisions of the Bombay Rent Act.

3. The plaintiff/respondent filed the suit on the ground that he was the owner of the suit premises and

defendant was in possession thereof as a tenant together with right to use w.c. and bath room in common as stipulated in the rent note dated 22-5-1971. By virtue of this agreement dated 21-5-1971 the suit premises was given on leave and licence basis to the defendant for the period of 36 months. However, due to operation of section 15(A) of the Bombay Rent Act with effect from 1-2-1973 the licensee occupying the premises on the date, were given protection as a statutory tenant. It was the case of the plaintiff that as per the terms and conditions in the said agreement dated 21-5-1971 and as per clause VIII thereof it was agreed that except suit premises described in the agreement, no other premises or any part thereof has to be used by the defendant. It was the case of the plaintiff/respondent that he was in exclusive right to use the w.c. and bath room, which was granted to him and allowed the defendant to make use of any space than the one as mentioned in the said agreement. The defendant along with other tenant viz. V.S.Gupte who was occupying another premises in the same building under an agreement, filed suit No. 574/97 against the plaintiff for declaration and injunction. The plaintiff wanted to construct new building above the ground floor structure and accordingly obtained sanctioned building plan and also obtained commencement certificate from the planning

authority. It was the case sought to be made out on behalf of the plaintiff that defendant had committed breach of terms of tenancy as he is claiming more area and facilities than once provided for in the agreement in the suit filed by him against the present plaintiff. Therefore it amounted to breach of contract between the parties and therefore plaintiff sought possession of the suit premises by virtue of section 16(i)(c) and 15(i) of Maharashtra Rent Control Act. The plaintiff also sought decree on the ground of nuisance and annoyance on the part of the defendant.

4. The petitioner/defendant contested the suit inter alia submitting that the allegations made by the plaintiff were false and therefore the suit was sought to be dismissed.

5. The learned trial Judge adjudicated the dispute on merits after recording evidence of both the parties and came to the conclusion that the plaintiff had proved that the defendant has caused nuisance and annoyance to the plaintiff and other neighbouring occupants. It was further held that the plaintiff had proved that the defendant had not observed and performed other conditions of the tenancy so far as they were consistent to the provisions of Maharashtra Rent Control Act and as such he was liable to be evicted

from the suit premises and decree of eviction came to be passed.

6. The appeal was preferred to the District Court, Pune. The Addl. District Judge after hearing both the parties concurred with the finding recorded by the trial court and held that the appeal had no merit and it came to be dismissed. Hence the present petition.

7. At the outset it must be noted that both the courts have recorded concurrent findings on factual aspects, holding that the petitioner defendant has caused nuisance and annoyance to the respondent and to the other neighbouring occupants. It was also held that the petitioner had not observed and performed other conditions of tenancy and considering the available material on record, the courts below have recorded the findings in the affirmative, holding that the plaintiff has proved all allegations.

8. The learned counsel for the petitioner vehemently urged that agreement dated 21-5-1971 which was between the parties, by virtue of which petitioner had entered into the suit premises, was no more prevalent and could not be read in evidence. Initially, it must be noted that this circumstance was not taken either during the trial nor in the appeal and is being argued for the

first time here. Infact, the evidence on record is sufficient to show that the agreement in question was not disputed at all by the defendant during the trial as well as in the appeal.

9. Breach of conditions of the agreement is pertaining to use of attic over the bathroom or w.c. which was in common use. The question whether this attic was part and parcel of the tenanted premises or not, was exhaustively discussed by the courts below. According to the respondent/plaintiff this attic was not part and parcel of the suit premises. The defendant claims exclusive use of the said premises in earlier suit No.547/97. Therefore in order to find out the terms and conditions of the agreement the courts below have looked into the documents of agreement dated 22-5-1971 and that it was mentioned by virtue of clause VIII thereof that except the premises mentioned in the agreement, no other premises has to be claimed by the defendant as a licensee and the petitioner/defendant had no right thereof. Infact the petitioner himself, by virtue of said agreement, is precluded from claiming any other room except mentioned therein.

10. The learned counsel for the petitioner urged that the impugned agreement was not to be read in evidence and could not be relied upon by the plaintiff in view

of the provisions of section 55(2) of the Act. If we read the scheme of the provisions of section 55 of the said Act itself, it is apparent that it is provided for the purpose of compulsory registration of the tenancy agreement. The said provision read thus:

55. Tenancy agreement to be compulsorily registered:

(1) Notwithstanding anything contained in this Act or any other law for the time being in force, any agreement or lease and licence or letting of any premises, entered into between the landlord and the tenant or the licensee, as the case may be after the commencement of the Act, shall be in writing and shall be registered under the Registration Act, 1908.

(2) The responsibility of getting such agreement registered shall be on the landlord and in the absence of the written registered agreement, the contention of the tenant about the terms and conditions subject to which a premises have been given to him by

the landlord on leave and licence or
have been let to him, shall prevail,
unless proved otherwise.

11. Therefore, it is clear from the said provision that it is not retrospective but the provision is specifically made prospective after the commencement of the Act, whereas it is admitted as well as evident position that the suit agreement was entered into by both the parties prior to commencement of the suit. Therefore, there is no doubt whatsoever that it was not compulsorily registrable document. It is also to be noted that the provisions of section 55 of the said Act nowhere contemplates termination of earlier agreement between the parties, nor extent of rented premises would be affected or governed by the said section. Therefore in law, the suit agreement stands good and therefore the arguments advanced on behalf of the petitioner contrary to this position, cannot be accepted, and once this position is reached there is no doubt whatsoever that both the courts below have, after appreciating the entire evidence in proper perspective, rightly held that the alleged act of the petitioner amounted to nuisance, as well as the act is contrary to the contract between the parties and therefore the petitioner was held liable to be evicted from the suit premises.

12. In the result, the petition has no merit and it deserves to be dismissed and stands dismissed with no order as to costs.

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